

Superseded 5/12/2015

19-2-113 Variances -- Judicial review.

- (1)
 - (a) Any person who owns or is in control of any plant, building, structure, establishment, process, or equipment may apply to the board for a variance from its rules.
 - (b) The board may grant the requested variance following an announced public meeting, if it finds, after considering the endangerment to human health and safety and other relevant factors, that compliance with the rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.
- (2) A variance may not be granted under this section until the board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.
- (3) Any variance or renewal of a variance shall be granted within the requirements of Subsection (1) and for time periods and under conditions consistent with the reasons for it, and within the following limitations:
 - (a) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention, abatement, or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available, and subject to the taking of any substitute or alternate measures that the board may prescribe;
 - (b)
 - (i) if the variance is granted on the grounds that compliance with the requirements from which variance is sought will require that measures, because of their extent or cost, must be spread over a long period of time, the variance shall be granted for a reasonable time that, in the view of the board, is required for implementation of the necessary measures; and
 - (ii) a variance granted on this ground shall contain a timetable for the implementation of remedial measures in an expeditious manner and shall be conditioned on adherence to the timetable; or
 - (c) if the variance is granted on the ground that it is necessary to relieve or prevent hardship of a kind other than that provided for in Subsection (3)(a) or (b), it may not be granted for more than one year.
- (4)
 - (a) Any variance granted under this section may be renewed on terms and conditions and for periods that would be appropriate for initially granting a variance.
 - (b) If a complaint is made to the board because of the variance, a renewal may not be granted unless, following an announced public meeting, the board finds that renewal is justified.
 - (c) To receive a renewal, an applicant shall submit a request for agency action to the board requesting a renewal.
 - (d) Immediately upon receipt of an application for renewal, the board shall give public notice of the application as required by its rules.
- (5)
 - (a) A variance or renewal is not a right of the applicant or holder but may be granted at the board's discretion.
 - (b) A person aggrieved by the board's decision may obtain judicial review.
 - (c) Venue for judicial review of informal adjudicative proceedings is in the district court in which the air contaminant source is situated.
- (6)
 - (a) The board may review any variance during the term for which it was granted.

- (b) The review procedure is the same as that for an original application.
- (c) The variance may be revoked upon a finding that:
 - (i) the nature or amount of emission has changed or increased; or
 - (ii) if facts existing at the date of the review had existed at the time of the original application, the variance would not have been granted.
- (7) Nothing in this section and no variance or renewal granted pursuant to it shall be construed to prevent or limit the application of the emergency provisions and procedures of Section 19-2-112 to any person or property.